

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-1178

B
Page 5

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

vs.

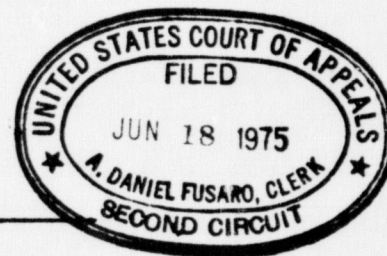
FRANK CLARK, III,

Appellant.

*Appeal from Judgment and Order Dated April 3, 1975 in the
United States District Court for the Southern District of New
York — Sat Below: Robert L. Carter, U.S.D.C.*

APPENDIX

HOWARD CERNY
Attorney for Appellant
345 Park Avenue
New York, New York 10022
(212) 688-0700



(8446)

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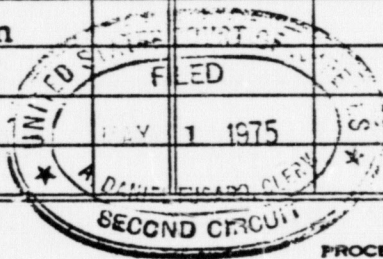
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| | |
|-------------------------|--|
| TITLE OF CASE | ATTORNEYS |
| THE UNITED STATES | For U. S.: |
| VS. | Douglas F. Eaton AUSA 264-6434 |
| FRANK CLARK, III 4-3-75 | |
| 4/22/75 | |
| | For Defendant (pro se) P.O. Box 1689 Titusville, Florida 32789 |
| | Howard Cerny 345 Park Ave, NYC 10022 688-0700 |

| ABSTRACT OF COSTS | AMOUNT | CASH RECEIVED AND DISBURSED | | | |
|---------------------------|--------|-----------------------------|------|----------|-----------|
| | | DATE | NAME | RECEIVED | DISBURSED |
| 01) me, | | | | | |
| erk, | | | | | |
| arshal, | | | | | |
| orney, | | | | | |
| Commissioner's Court 18 | | | | | |
| §2314 & §2 | | | | | |
| Interstate transportation | | | | | |
| stolen property. | | | | | |
| (One Count) | | | | | |



| DATE | PROCEEDINGS |
|-------|---|
| 26-74 | Filed Indictment. |
| 7-74 | Deft. (no atty.) Court directs entry of not guilty plea. Motions returnable in 10 days. Deft. ordered photographed and fingerprinted. Deft. released on his own recognizance. Case assigned to Judge Carter for all purposes. MacMahon, J. |
| | Deft. |
| 21-74 | Filed/Motion for discovery and inspection |
| 21-74 | Filed Motion to suppress evidence and Testimony |
| 21-74 | Filed Motion for Bill of Particulars. |

Docket Entries

A2

| DATE | PROCEEDINGS | CLERK'S FEES | |
|----------|---|--------------|-----------|
| | | PLAINTIFF | DEFENDANT |
| 12-19-74 | Filed Notice of Readiness for Trial | | |
| 1-14-75 | Pre-trial conference held before Carter, J. | | |
| 2-10-75 | Filed defts. affdt. and notice of motion to dismiss indictment, ret. on: date to be fixed by court. | | |
| 2-14-75 | Filed defts. notice that a hearing will be held on Feb. 18, 1975 at 9am. | | |
| 2-18-75 | Filed govts. affdt. of Robert Hemley in opposition to defts. motion to dismiss indictment. | | |
| 2-20-75 | Filed govts. affdt. of Robert Hemley re: defts. omnibus motion for discovery bill of particulars and to suppress certain evidence. | | |
| 2-19-75 | Filed memo end. on defts. motion dated Oct. 21, 1974--Motion to suppress evidence and testimony is denied. Carter, J. m/n (to pro se for notice) | | |
| 2-19-75 | Filed memo end. on defts. motion dated 2/10/75--Motion to dismiss indictment is denied. Carter, J. (to pro se for notices) | | |
| 2-18-75 | Jury trial begun (deft. appearing pro se) | | |
| 2-19-75 | Jury trial contd. | | |
| 2-20-75 | " " " and concluded. Jury verdict of GUILTY. P.S. R. ordered. Sentence adj. to March 25, 1975 at 9:30am. in Rm. 705. Deft. contd. ROR. Carter, J. | | |
| 2-24-75 | Filed deft's pro-se motion for a new trial. | | |
| 2-28-75 | Filed Governments affdvt. in opposition to deft's motion for a new trial. | | |
| 2-28-75 | Filed deft's suppl. motion for a new trial. | | |
| 3-05-75 | Filed Transcript of record of proceedings, dated 1/7 Jan-75 | | |
| 3-11-75 | Filed Transcript of record of proceedings, dated Feb 18, 19, 20, 1975 | | |
| 3-04-75 | Filed notice of appearance for deft. by: Howard Cerny 345 Park Ave, NYC 10022 | | |
| | (B) 1 see P. 3) | | |

NY 100-1
74-0140

INDICTMENT

A4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v -

FRANK CLARK III,

Defendant.

75-1178

RECEIVED

74 Cr. 914

ONLY COPY AVAILABLE

The Grand Jury charges:

On or about the 9th day of January, 1974, in the Southern District of New York, FRANK CLARK III, the defendant, unlawfully, wilfully and knowingly did transport in interstate commerce, to wit, from West River, Vermont to New York, New York, certain goods of the value of \$5,000 or more, to wit, a diamond weighing approximately 8.04 carats and set in a platinum ring, knowing the same to have been stolen, converted and taken by fraud.

(Title 18, United States Code, Section 2314 and Section 2.)

FORNAN

PAUL J. CURRAN
United States Attorney

AFFIDAVIT FOR SEARCH WARRANT

Form A. G. 106 (Rev. 1970)

AFFIDAVIT FOR
Search Warrant**United States District Court**FOR THE
SOUTHERN DISTRICT OF NEW YORKASK F.B.I. WHEN THE MACHINERY WAS PUT IN MOTION
FOR THIS WARRANT - TIME OF DAY -

Magistrate's Docket No. 74

Case No. 42

~~XXXXXXXXXXXXXXXXXXXX~~
UNITED STATES OF AMERICA

XX

**In the Matter of a Search Warrant for Safe
Deposit Box #833, Bankers Trust Company,
51 Rockefeller Plaza, New York, New York****AFFIDAVIT FOR
SEARCH WARRANT**BEFORE **Honorable Edward L. Gertzel, U.S. Courthouse, Foley Square, N.Y., N.Y.**
Name of Magistrate Address of Magistrate

The undersigned being duly sworn deposes and says:

That he (has reason to believe) ~~XXXXXXXXXXXXXXXXXXXX~~ that (on the premises known as)**Safe Deposit Box #833, Bankers Trust Company, 51 Rockefeller Plaza,
New York, New York**

ONLY COPY AVAILABLE

in the **Southern** District of **New York**there is now being concealed certain property, namely **a round diamond, weighing 8.04 carats,**
and a platinum ring and mounting set with two tapered baguettes, contained in
an envelope signed by Gordon Buffield, P. F. Mitchell, Jr., and John G. Gera,
here describe property

Affidavit for Search Warrant

which ~~are~~ ^{here give alleged grounds for search and seizure} constitute evidence of the commission of a criminal offense, to wit, transportation in interstate commerce of stolen goods of the value of \$5,000 or more, in violation of Title 18, United States Code, Section 2314

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

(See Attached Rider)

ONLY COPY AVAILABLE

John R. Bealy
JOHN R. BEALY
Special Agent, FBI

Signature of Affiant.

Official Title, if any.

Sworn to before me, and subscribed in my presence. January 11, 1974

United States Magistrate

The Federal Rules of Criminal Procedure provides: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

Affidavit for Search Warrant

RIDER

ONLY COPY AVAILABLE

1. Robert Deevey, Security Supervisor, Neiman-Marcus, Dallas, Texas, told me today that Neiman-Marcus received a diamond ring on consignment from Stanley Doppelt, that it had been in the Neiman-Marcus store in Dallas, that an inventory there in January 1973 revealed that it was missing, and that Neiman-Marcus was in the process of reimbursing Doppelt for the loss.

2. Gordon Duffield, of L. Bergman & Company, jewelers located at 630 Fifth Avenue, New York, New York, told me that on January 10, 1974, Frank Clark III gave him the diamond ring described above for appraisal, and that he then sent it to *JFB* showed Doppelt for the appraisal.

3. Doppelt, who is a diamond cutter, told me that the ring was worth \$75,000, that he was positive that this ring had been originally cut by him and that it was the same ring that he had sent to Neiman-Marcus and that had been found to be missing. According to Doppelt, Neiman-Marcus' records showed that the ring was transferred from Neiman-Marcus' store in Bal Harbour, Florida to its Dallas store on May 8, 1972.

4. Frank Clark III made a statement today to Special Agents P. F. Mitchell, Jr. and John H. Gera. Clark said that he bought the ring in May or June of 1972 in Cocoa Beach, Florida from William R. Turner for \$20,000 (\$15,000 in cash and \$5,000 in the form of forgiveness of two debts). He said that Turner died in October 1972. He said that he never saw any documents showing title to the ring. He said it was his opinion that Turner had won the ring by gambling, but said that he never asked Turner where he got it. Clark also said he was a member of the Florida bar and had defended numerous criminal cases. Clark admitted he transported the ring from Vermont to New York.

JFB 5. Duffield is keeping the ring in L. Bergman's safe deposit box, described above.

SEARCH WARRANT

Search Warrant

A8

Form A-10 (Revised Sept. 1, 1961)

DFE:emw

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Magistrate's Docket No. 74

Case No. 42

XX

In the Matter of a Search Warrant for
Safe Deposit Box #833, Bankers Trust
Company, 51 Rockefeller Plaza, New York,
New York.

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation
or any other authorized officer;

Affidavit having been made before me by Special Agent John R. Begley of the
Federal Bureau

that he ~~has~~ reason to believe that ~~XXXXXXXXXXXX~~
~~XXXXXXXXXX~~ on the premises known as

Safe Deposit Box #833, Bankers Trust Company,
51 Rockefeller Plaza, New York, New York

In the Southern District of New York

there is now being concealed certain property, namely a round diamond, weighing 8.04 carats,
and a platinum ring and mounting set with two tapered baguettes, contained
in an envelope signed by Gordon Duffield, P. F. Mitchell, Jr., and John G.
Gera,

which ~~xxx~~ constitute evidence of the commission of a criminal offense, to
wit, transportation in interstate commerce of stolen ~~goods of stolen~~
goods of the value of \$5,000 or more, in violation of Title 18, United
States Code, Section 2314,

and as I am satisfied that there is probable cause to believe that the property so described is being
concealed on the ~~XXXXXX~~ premises above described and that the foregoing grounds for applica-
tion of the search warrant exist.

You are hereby commanded to search forthwith the ~~XXXXXX~~ place named for the property specified,
serving this warrant and making the search in the daytime ~~XXXXXXXXXXXXXXXXXXXX~~ and if the property be
found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare
a written inventory of the property seized and return this warrant and bring the property before me
within ten days of this date, as required by law.

Dated this 11th day of January, 1974

14

Sam L. Smith
U.S. Magistrate

The United States Constitution provides: "The warrant shall direct that it be served in the daytime, but if the officers are satisfied that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

DEFENDANT'S MOTION TO DISMISS THE INDICTMENT
(Filed February 10, 1975)

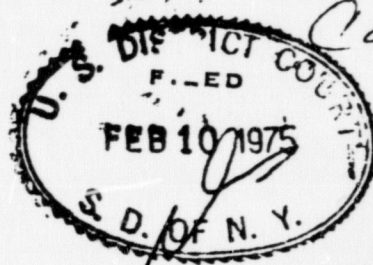
0
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

FRANK CLARK 111,

Defendant



FEB 13 1975

CASE NUMBER 74 Cr. 914

MEMO ENDORSED

MOTION BY DEFENDANT TO DISMISS THE INDICTMENT

Frank Clark 111, Defendant, in proper person, moves that the indictment be dismissed on the following ground:

1. The indictment does not state facts sufficient to constitute an offense against the United States, and is fatally defective in that the said indictment wholly fails to allege an indispensable element of the alleged crime, i.e., that the property was stolen, converted and/or taken by fraud. (Rule 12(b)(2), Federal Rules of Criminal Procedure, Title 18, U.S.C.A.).

COMMENT

Despite the fact that the general law on the sufficiency of indictments is that the indictment is legally sufficient so long as it follows the statute, such general law should not pre-

Defendant's Motion to Dismiss the Indictment

vail in an instance where an essential element of the offense is omitted from the charging document.

The offense of interstate transportation of stolen property is comprised of four separate and distinct elements, each of which must be alleged in the indictment and proved beyond a reasonable doubt at the trial. The elements are:

1. Interstate transportation of the property.
2. Value of \$5,000.00 or more.
3. Knowledge of defendant that property was stolen.
4. The property was in fact stolen.

(Loman vs. U.S., CA 8, 243 F 2d. 327, 329)

If the indictment in this cause is allowed to stand as presently drafted, Defendant would be in jeopardy and subject to a possible conviction by a jury without the necessity of proving that the diamond ring was actually stolen property. The present situation is analogous to a charge of perjury in which the indictment totally fails to recite that the Defendant was placed under oath.

The charge of interstate transportation of stolen property is not an independent crime, but instead is an offense springing from an original larceny, embezzlement or conversion. If the property is not of a stolen character, the offense of transporting same can not exist. To hold otherwise would in effect


All

Defendant's Motion to Dismiss the Indictment

santion a conviction in a situation where the Defendant believed the property to be stolen when in truth and fact it was not of such character.

For the reasons advanced, the Court is asked to dismiss the indictment.

Respectfully submitted,



Frank Clark III, Defendant, in pro se.
P.O. Box 1689
Titusville, Florida 32780

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the above Motion to Dismiss was mailed by the undersigned to Robert B. Hemley, Assistant U.S. Attorney, Room 431, U.S. Court House, Foley Square, New York, New York 10007 this 6th. day of February, 1975.



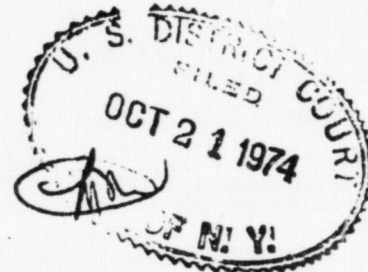
Frank Clark III

MOTION TO SUPPRESS EVIDENCE AND TESTIMONY
(Filed October 21, 1974)

OCT 21 1974

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

vs.

CASE NUMBER 74 Cr. 914

FRANK CLARK 111,

Defendant

MOTION TO SUPPRESS EVIDENCE AND TESTIMONY

Defendant, in pro se, under the provisions of Rule 41(e), Federal Rules of Criminal Procedure, moves the Court for an Order suppressing the use as evidence certain personalty identified as an 8.03 carat diamond ring now in the custody of Federal authorities, such ring being the subject matter of the above cited criminal charge. The ground for this Motion is that the ring was illegally seized without warrant. The facts follow:

On January 10, 1974 movant took the ring to L. Bergman, Inc., diamond merchant in Rockefeller Center, N.Y. for appraisal and possible sale. It was agreed that Bergman would turn the ring over to a local diamond laboratory for examination and return to movant the following day. Bergman, Inc. signed a receipt acknowledging responsibility for the ring.

Motion to Suppress Evidence and Testimony

On the morning of January 11, 1974 movant was visited at his Americana Hotel room by F.B.I. agents Gera and Mitchell, and was advised by them that the ring was stolen or missing from the Nieman-Marcus store in Dallas, Texas. Movant, immediately after the F.B.I. interview, went to Bergman and demanded the return of the ring in the presence of witnesses, this after making tender of the receipt. Bergman refused this demand stating that he had been orally ordered by Federal authorities to retain the ring until a search warrant could be issued. He admitted that no search warrant had been served upon him at the time the demand for return was made.

For a second portion of this Motion, and under the applicable provisions of Rule 12, Federal Rules of Criminal Procedure, Defendant moves the Court for an Order suppressing the testimony of F.B.I. agents Gera and Mitchell and dismissing the indictment on the ground that the agents failed to apprise movant of his constitutional right to remain silent prior to taking his statement at the Americana Hotel on January 11, 1974 as is required in the Miranda ruling and later U.S. Supreme Court cases.

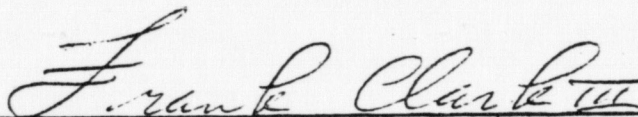
The government can not realistically claim that the interview was "routine and courteous", as witness the following:

Motion to Suppress Evidence and Testimony

1. Movant was in possession of a valuable diamond ring allegedly stolen, lost or mislaid from a well known Texas department store.
2. Movant's wife was told by the F.B.I. agents after the interview that if movant successfully recovered the ring from Bergman, the F.B.I. would block every road at the Vermont border, and would detain movant and seize the ring.
3. The interview with movant by the F.B.I. agents produced testimony of Agent Mitchell before the Grand Jury which led to the indictment.

WHEREFORE movant asks the Court to suppress the diamond ring as evidence, suppress the testimony of Agents Gera and Mitchell, and dismiss the indictment with prejudice.

Respectfully submitted,



Frank Clark III, Defendant in pro se
P.O. Box 3987
1938 Ringling Boulevard
Sarasota, Florida 33577

STATE OF FLORIDA
COUNTY OF SARASOTA

BEFORE ME, the undersigned authority, personally appeared Frank Clark III, to me well known, who after first being duly sworn, upon his oath deposes and says that all matters set forth in the above two pages are true and correct. Sworn to and

Motion to Suppress Evidence and Testimony

subscribed before me in the County and State aforesaid this 18th.
day of October, 1974.

NOTARY PUBLIC, State of Florida at Large
My Commission Expires May 9, 1976
Bonded by AUTO OWNERS INSURANCE

2.

Janet L. Bell

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the above
Motion was mailed by the undersigned to the Honorable Douglas Eaton,
Assistant U.S. Attorney, U.S. Court House, Foley Square, New York,
New York this 18th. day of October, 1974.

Frank Clark III
Frank Clark III, Defendant in pro se.

TELEPHONE PLAZA 7-4880

CABLE ADDRESS: UDOPPELT, N.

U. DOPPELT & CO.

Importer and Cutter of Diamonds

580 FIFTH AVENUE • NEW YORK, N.Y. 10036

1645

SOLD TO

Neiman-Marcus
Dallas, Texas 75201

DATE Dec. 4, 19

Dept. 225

TERMS:

| | | | |
|---|--|--------------|-----------|
| 1 | Brilliant 8.05 ct. with Plat. mtg. for ... | \$ 11,000.00 | |
| | <p><i>Balance on Jan 1st</i> <i>in Dallas last</i> <i>year ...</i></p> | | \$ 11,000 |

.00

DEFENDANT'S EXHIBIT F - CHECK DATED JANUARY 10, 1973

FRANK CLARK III
LAEL N. CLARK
P. O. BOX 371
WEST DOVER, VT. 05356

214

0 1 1 7 7 4

Pay to the order of Gordon Duff 10 19 73 58.48
Two Hundred 116
00
00 Dollars

VERMONT NATIONAL BANK
WILMINGTON, VERMONT 05363

Memo Clark

⑆0116⑈0048⑆ ⑆17 3⑈5335⑈ ⑆0000020000⑆

PC AMERICAN BANK NOTE COMPANY

DEFENDANT'S MOTION FOR NEW TRIAL (Filed February 24, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

FRANK CLARK III,
Defendant

CASE NUMBER 74 Cr. 914

MOTION FOR NEW TRIAL

The Defendant, Frank Clark III, in pro se, moves the Court for an Order granting a new trial in the above styled cause under the provisions of Rule 33, Federal Rules of Criminal Procedure on the following grounds

1. The verdict of guilty is against the weight of the evidence.
2. The verdict is contrary to law.
3. Willful misconduct of the prosecutor constituting plain error fatally prejudicial to Defendant in the presence of the jury, both in statements and questions in opening argument, during the trial and during closing argument concerning, among other things, matters not in evidence and totally extrinsic to the case being tried.

Defendant's Motion for New Trial

4. Willful misconduct of the prosecutor in side-bar conferences called by the prosecutor, sole purpose of which was to totally discredit and defame Defendant and his wife, a material defense witness, by showing the Court newspaper clippings which bore no relevance to the trial in progress.

Respectfully submitted,

Frank Clark III, Defendant in pro se
P. O. Box 1689
Titusville, Florida 32780

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the above Motion for New Trial was mailed airmail postage pre-paid by the undersigned to Robert B. Hemley, Assistant United States Attorney, Room 431, United States Court House, Foley Square, New York, New York 10007 this 22nd. day of February, 1975.

Frank Clark III

DEFENDANT'S SUPPLEMENTAL MOTION FOR NEW TRIAL
(Filed February 28, 1975)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

CASE NUMBER 74 Cr. 914

FRANK CLARK III,

Defendant

SUPPLEMENTAL MOTION FOR NEW TRIAL

Defendant, Frank Clark III, in pro se, makes this Supplemental Motion for New Trial on the following additional grounds:

1. The Court erred in denying defendant's motion for acquittal made first at the close of the prosecution's case and renewed at the conclusion of all of the evidence.
2. The verdict is not supported by substantial evidence.
3. The Court erred in denying objections to questions addressed to Frank Clark III, defense witness, and erred in denying objections to questions to F.B.I. agent Mitchell, a prosecution witness.

Defendant's Supplemental Motion for New Trial

4. The Court erred in charging the jury and in refusing to charge the jury as requested.

Frank Clark III, Defendant, in pro se
P. O. Box 1689
Titusville, Florida 32780

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the above Supplemental Motion for New Trial was mailed by the undersigned to Robert B. Hemley, Assistant U.S. Attorney, Room 431, U.S. Court House, Foley Square, New York, New York 10007 this 24th. day of February, 1975.

D Frank Clark III, Defendant

JUDGMENT AND PROBATION/COMMITMENT ORDER
(Filed April 3, 1975)

A23

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 24

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
4 3 75

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Appearing Pro Se FRANK CLARK III By HOWARD F. CHENE
(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **unlawfully, wilfully, and knowingly, did transport in interstate commerce a diamond weighing approximately 8.04 carats and set in a platinum ring from West Dover, Vermont to New York, New York knowing the same to have been stolen, converted and taken by fraud.**
(Title 18, United States Code, Section 2384 and Section 2.)

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of **SIX(6)** MONTHS, execution of prison sentence is suspended, and the defendant is **FINED \$7,500** dollars fine is to be paid or the defendant is to stand committed.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

ROBERT L. CARTER

Date April 3, 1975

CERTIFIED AS A TRUE COPY OF

THE DATE

By

CLERK
DEPUTY

MOTION FOR BILL OF PARTICULARS

A24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *

vs. *

FRANK CLARK III, *

Defendant *

CRIMINAL CASE NUMBER 74 Cr. 914

MOTION FOR BILL OF PARTICULARS

Defendant, in pro se, moves the Court for an Order requiring the Government to furnish a Bill of Particulars in this cause on the ground that the indictment as drawn is too vague and indefinite to enable Defendant to properly prepare his defense, and on the further ground that such bill would serve to avoid or minimize the danger of surprise at the trial.

Without the production of such bill of particulars containing facts and circumstances known to the prosecution, the Defendant would be forced into the untenable position of proving a negative to the jury, that is to say, to try to adduce proof that I did not know the ring was stolen. To place Defendant under such a burden would only serve to eliminate the presumption of innocence and replace it with the presumption of guilt. If the prosecution is not required to furnish facts supporting their bare conclusion of fact that I knew the ring was stolen, converted or taken by fraud, such omission would further erode the right of the Defendant to remain silent if he so elected.

Defendant thus requests particulars on all facts tending to prove that he knew the ring was stolen, on all facts tending to prove that the ring was actually stolen, converted or taken by fraud, and on all facts tending to prove the exact date and circumstances under which the ring was stolen, converted or taken by fraud from the Hicman-Morris department store in Dallas, Texas.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

CASE NUMBER 74-Cr. 914

FRANK CLARK III,

Defendant

MOTION FOR DISCOVERY AND INSPECTION

Defendant, in pro se, under the applicable provisions of Rule 16, Federal Rules of Criminal Procedure, moves the Court in this Two-part Motion for an Order requiring the government to allow the Defendant to inspect, copy or photograph the following items, statements, records, documents, books, tangible items and other physical properties which are in the possession of the government, which items are necessary and material to investigation by the Defendant leading to a proper defense of his cause

AS TO RULE 16(a)(1)

To permit the inspection and copying of any relevant recorded statements made by the Defendant during his interview with F.B.I. agents Gera and Mitchell at the Americana Hotel in New York City on the morning of January 11, 1974.

AS TO RULE 16(b)

To permit the inspection, copying or photographing of the following documents, reports, correspondence, phone or office memos, transcripts of recorded local and long distance phone calls, and all other memoranda and articles in writing as they

1. Any and all communications and writings between Stanley Doppelt, New York City diamond cutter and the Nieman-Marcus retail stores in Bal Harbor, Florida and Dallas, Texas, including all reference to insurance claims, policies and payment pertaining to the allegedly stolen 8.03 carat diamond ring which is the subject matter of this cause.
2. Any and all communications and writings between Nieman-Marcus department store and Broadway-Hale, Inc., their holding company pertaining to the said diamond, including all correspondence and reports concerning facts surrounding the disappearance of the said ring.
3. Any and all correspondence and reports between Broadway-Hale, Inc., Nieman Marcus department store in Dallas, Texas and their combined insurance carrier for the said diamond.
4. Any and all correspondence if any between L. Bergman, Inc. Rockefeller Center, New York City and Stanley Doppelt of New York City, including any appraisals or evaluations of the said diamond.

Respectfully submitted,

Frank Clark III, Defendant
P.O. Box 3987
1938 Ringling Boulevard
Sarasota, Florida 33577

STATE OF FLORIDA
COUNTY OF SARASOTA

BEFORE ME, the undersigned authority, personally appeared Frank Clark III, to me well known, who after first being duly sworn, upon his oath deposes and says that all matters set forth in the above Motion are true and correct. Sworn to and subscribed before me in the County and State aforesaid this 18th day of October, 1974.

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the above Motion for Discovery and Inspection was mailed to the Honorable Douglas F. Eaton, Assistant U.S. Attorney, U.S. Court House, Foley Square, New York, New York 10007 by the Undersigned this 18th. day of October, 1974.

Frank Clark 111

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA :

-v-

FRANK CLARK, III,

Defendant. :

AFFIDAVIT

74 Cr. 914 (RLC)

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

ROBERT B. HEMLEY, being duly sworn, deposes and
says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and as such have been assigned to the above-captioned matter. I make this affidavit in response to defendant's omnibus motion for discovery, a bill of particulars, and to suppress certain evidence. In view of the failure of those motions to raise substantial questions of law, I have not prepared a separate memorandum of law, but have made necessary legal arguments in this affidavit.

Re: Discovery and Inspection

2. As to defendant's motion made pursuant to Rule 16 of the Federal Rules of Criminal Procedure for discovery and inspection, the Government:

a) consents to defendant's request for copies of any written or recorded statements made by him, within the Government's control.

b) consents to defendant's request to inspect and copy such documents and related materials, if any, which are within the possession, custody or control of the Government, as are detailed by defendant in items one through four

Affidavit of Robert B. Hemley
of his motion papers under the heading "AS TO RULE 16(b)."

A29

Re: Bill of Particulars

3. As to defendant's motion made pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure for a bill of particulars, the Government opposes the request as seeking information beyond the appropriate scope and purpose of a bill of particulars.

4. Defendant requests "particulars on all facts tending to prove that he knew the ring was stolen, on all facts tending to prove that the ring was actually stolen, converted, or taken by fraud, and on all facts tending to prove the exact date and circumstances under which the ring was stolen, converted or taken by fraud from the Neiman Marcus department store in Dallas, Texas." In essence, he seeks the Government's legal theory of the case and a disclosure of the Government's evidence in advance of trial, objectives beyond the appropriate scope and purpose of a bill of particulars, e.g., United States v. Crisona, 271 F. Supp. 150 (S.D.N.Y. 1967), aff'd, 416 F.2d 107 (2d Cir. 1969); United States v. Verra, 203 F. Supp. 87, 92 (S.D.N.Y. 1962).

Re: Suppression of Evidence

5. The Government opposes defendant's motion to suppress physical evidence (the diamond ring) and statements which he made to agents of the Federal Bureau of Investigation on January 11, 1974 as being wholly without merit and failing to raise sufficient factual issues to necessitate a hearing.

Affidavit of Robert B. Hemley

A30

6. Contrary to defendant's stated ground for his motion to suppress the diamond ring "that the ring was illegally seized without warrant," the ring was seized from a Bankers Trust Company safe deposit box pursuant to a valid search warrant issued January 11, 1974 by the Hon. Gerard L. Goettel. (A copy of the search warrant is attached as an exhibit).

7. With respect to defendant's motion to suppress statements he made to F.B.I. agents in his hotel room on January 11, 1974, it is uncontested that at the time of the interview conducted in the presence of defendant's wife, and with defendant's consent, defendant was not detained or in any sort of a custodial situation. Accordingly he was not entitled to warnings of any sort. Miranda v. Arizona, 384 U.S. 436, 467, 477-478, United States v. Hall, 421 F.2d 540 (2d Cir. 1969), cert. denied, 397 U.S. 990 (1970). United States v. Gibson, 392 F.2d 373 (4th Cir. 1968).

WHEREFORE, for the reasons stated herein, it is respectfully submitted that except where consented to, defendant's motions for discovery, a bill of particulars and to suppress evidence should, in all respects, be denied without a hearing.

/s/
ROBERT B. HEMLEY
Assistant United States Attorney

Sworn to before me this
17th day of December, 1974.

ALMA HANSON
NOTARY PUBLIC, New York
No. 25000, State of New York
Commission Expires 12/31/76

SEARCH WARRANT

Search Warrant

A31

DFE:cmv

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

XX

Magistrate's Docket No. 74

Case No. 42

In the Matter of a Search Warrant for
Safe Deposit Box #833, Bankers Trust
Company, 51 Rockefeller Plaza, New York,
New York.

SEARCH WARRANT

To Any Special Agent of the Federal Bureau of Investigation
or any other authorized officer;

Affidavit having been made before me by Special Agent John R. Begley of the
Federal Bureau

that he { has reason to believe } that { ~~XXXXXXXXXXXX~~
~~XXXXXX~~ on the premises known as }

Safe Deposit Box #833, Bankers Trust Company,
51 Rockefeller Plaza, New York, New York

In the Southern District of New York

there is now being concealed certain property, namely a round diamond, weighing 8.04 carats,
and a platinum ring and mounting set with two tapered baguettes, contained
in an envelope signed by Gordon Duffield, P. F. Mitchell, Jr., and John G.
Gera,

which ~~xxx~~ constitute evidence of the commission of a criminal offense, to
wit, transportation in interstate commerce of stolen ~~goods of value~~
goods of the value of \$5,000 or more, in violation of Title 18, United
States Code, Section 2314,

and as I am satisfied that there is probable cause to believe that the property so described is being
concealed on the ~~XXXXXX~~ premises above described and that the foregoing grounds for application for issu-
ance of the search warrant exist.

You are hereby commanded to search forthwith the ~~XXXXXX~~ place named for the property specified,
serving this warrant and making the search in the daytime ~~XXXXXXXXXXXXXXXXXXXX~~ and if the property be
found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare
a written inventory of the property seized and return this warrant and bring the property before me
within ten days of this date, as required by law.

Dated this 11th day of January, 1974

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John R. Begley
U.S. Magistrate

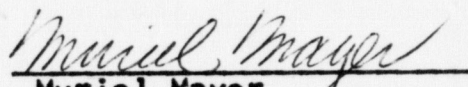
AFFIDAVIT OF SERVICE

Re: 75-1178
U.S.A. v. Clark, III

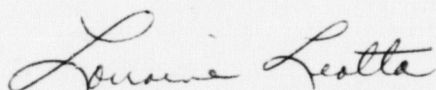
STATE OF NEW JERSEY :
: ss.:
COUNTY OF MIDDLESEX :

I, **Muriel Mayer**, being duly sworn according to law,
and being over the age of 21 upon my oath depose and say
that: I am retained by the attorney for the above named
Appellant

That on the **16th** day of **June**, 1975, I served
the within **Appendix & Brief for Appellant** in the matter
of **United States of America v. Frank Clark, III**,
upon **Paul J. Curran, Esq., United States Attorney,
Southern District, U.S. Courthouse, Foley Square,
New York, New York 10007**
by depositing two (2) true copies of ^{Brief & 1 Appendix} the same securely
enclosed in a post-paid wrapper, in an official depository
maintained by the United States Government.


Muriel Mayer

Sworn to and subscribed
before me this **16th** day
of **June** 1975.



A Notary Public of the
State of New Jersey.

LORRAINE LEOTTA

NOTARY PUBLIC OF NEW JERSEY
My Commission Expires April 13, 1977.